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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA,)

10 Plaintiff,)

11 v.)

12 MARINE POWER AND EQUIPMENT)
13 COMPANY, INC., and WFI)
14 INDUSTRIES, INC.,)

15 Defendants.)

NO. C85-382 R

COMPLAINT

16 The United States of America, at the request of the
17 Administrator of the United States Environmental Protection
18 Agency ("EPA"), alleges as follows:

19 INTRODUCTION

20 1. This is a civil action brought pursuant to Section 301
21 of the Clean Water Act ("CWA"), 33 U.S.C. § 1311, and the Refuse
22 Act, 33 U.S.C. § 407, to enjoin the illegal discharges of
23 pollutants and refuse by the Marine Power and Equipment Company
24 from their ship repair facilities into the Duwamish River and
25 Lake Union in Seattle, Washington. This action also seeks civil
26 penalties, a study to determine the nature and extent of the

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1 damage caused by the illegal discharges and, if necessary,
2 remedial work.

3 JURISDICTION AND VENUE

4 2. This Court has subject matter jurisdiction pursuant to
5 28 U.S.C. §§ 1331, 1345, and 1355, and 33 U.S.C. § 1319(b).

6 3. At all times material to this action, the defendants
7 were corporations doing business in the Western District of
8 Washington. The defendants currently own and operate two ship
9 repair and painting facilities that are relevant to this action
10 in Seattle, Washington. One such facility is located on the east
11 bank of the Duwamish River ("Duwamish Facility") at Slip 3 just
12 upstream (south) of the First Avenue South Bridge. The other
13 facility is located on the north bank of Lake Union at 1441 North
14 Northlake Way in Seattle, Washington ("Lake Union Facility").
15 The defendants have owned and operated each such facility
16 continuously from at least on or about January 1, 1979 to the
17 present. At both facilities, defendants repair and paint ships
18 using submersible dry docks, which raise ships out of the water
19 for repair or painting and lower ships back into the water
20 following such work.

21 4. The defendant WFI Industries, Inc. ("WFI"), is the
22 parent corporation of Marine Power and Equipment, Inc. ("MPE").

23 DUWAMISH RIVER FACILITY

24 A. First Claim - Clean Water Act

25 5. At the Duwamish Facility in 1984 and 1985, the
26 defendants discharged pollutants into the Duwamish River, which

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1 is a navigable water body of the United States within the meaning
2 of 33 U.S.C. § 1362(7). The pollutants, consisting of spent
3 sandblasting materials, paint, other debris, and process wastes
4 were discharged to the Duwamish River by submerging dry docks on
5 which piles of the debris had accumulated as a result of MPE's
6 sandblasting operations and from hoses or pipes. Upon submersion
7 of the dry docks into water, much of the sandblasting residues
8 and debris washes off the docks into the Duwamish River.

9 6. The sandblasting residue, debris, and process wastes
10 generated by the defendants at the Duwamish Facility include, but
11 are not limited to:

- 12 a. used sandblasting material;
- 13 b. chips of paint, tar, rust, and other chemical
14 substances sandblasted and removed from the exterior of ships;
- 15 c. solvents and other materials used to prepare the
16 sandblasted surfaces for repainting and refinishing and for other
17 purposes;
- 18 d. spilled liquids used to repaint and refinish the
19 sandblasted surfaces of the ships; and
- 20 e. grease and oil.

21 7. The materials described in paragraph 6 constitute
22 "pollutants" within the meaning of 33 U.S.C. § 1362(6). The dry
23 docks and hoses or pipes used at the Duwamish Facility from which
24 these pollutants are discharged constitute "point sources" within
25 the meaning of 33 U.S.C. § 1362(14).
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1 8. Some of the discharged pollutants described in
2 paragraph 6 have collected in and on the bottom sediments of the
3 Duwamish River. Based on information and belief, those
4 pollutants in part remain on the river bottom and, in part, have
5 been dispersed into Puget Sound.

6 9. The above-described discharges of pollutants constitute
7 violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
8 Accordingly, the defendants are liable for civil penalties
9 pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, in an
10 amount not to exceed \$10,000 per day for each calendar day on
11 which defendants discharged pollutants from the Duwamish Facility.

12 B. Second Claim - Refuse Act

13 10. Paragraphs 2 through 9 are herein incorporated in their
14 entirety by reference.

15 11. Defendants' discharges of sandblasting material and
16 other debris from the Duwamish Facility into the Duwamish River
17 constitute a deposit of refuse into a navigable water in
18 violation of the Refuse Act, 33 U.S.C. § 407.

19 12. The Duwamish Facility occupies parts of the banks and
20 shorelines adjoining navigable waters of the United States within
21 the meaning of the Refuse Act, 33 U.S.C. § 407.

22 13. In addition to depositing refuse in navigable waters,
23 the defendants have deposited at the Duwamish Facility certain
24 refuse, namely sandblasting residues of the same type and
25 composition as those described in paragraph 6. That refuse is
26 currently located upon the east bank of the Duwamish River in

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1 such a location as to be liable to being washed into the river.
2 Such deposits of materials on the banks violate the Refuse Act,
3 33 U.S.C. § 407.

4
5 LAKE UNION FACILITY

6 A. First Claim - Clean Water Act

7 14. At the Lake Union Facility in 1984 and 1985, the
8 defendants discharged pollutants into Lake Union, which is a
9 navigable water body of the United States within the meaning of
10 33 U.S.C. § 1362(7). The pollutants, consisting of spent
11 sandblasting materials, paint, other debris, and process wastes
12 were discharged to Lake Union by submerging docks on which piles
13 of the debris had accumulated as a result of MPE's sandblasting
14 operations and from hoses or pipes. Upon submersion of the dry
15 docks into water, much of the sandblasting residues and debris
16 washes off the docks into Lake Union.

17 15. The sandblasting residue, debris, and process wastes
18 generated by the defendants at the Lake Union Facility include,
19 but are not limited to:

- 20 a. used sandblasting material;
21 b. chips of paint, tar, rust, and other chemical
22 substances sandblasted and removed from the exterior of ships;
23 c. solvents and other materials used to prepare the
24 sandblasted surfaces for repainting and refinishing and for other
25 purposes;
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1 d. spilled liquids used to repaint and refinish the
2 sandblasted surfaces of the ships; and

3 e. grease and oil.

4 16. The materials described in paragraph 15 constitute
5 "pollutants" within the meaning of 33 U.S.C. § 1362(6). The dry
6 docks and hoses or pipes used at the Lake Union Facility from
7 which such pollutants have been and are discharged constitute
8 "point sources" within the meaning of 33 U.S.C. § 1362(14).

9 17. Some of the discharged pollutants described in
10 paragraph 15 have collected in and on the bottom sediments of
11 Lake Union.

12 18. The above-described discharges of pollutants constitute
13 violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
14 Accordingly, the defendants are liable for civil penalties
15 pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, in an
16 amount not to exceed \$10,000 per day for each day on which
17 defendants discharged pollutants from the Lake Union Facility
18 into Lake Union.

19 ~~are not~~ B. Second Claim - Refuse Act

20 19. Paragraphs 14 through 18 are herein incorporated in
21 their entirety by reference.

22 20. Defendants' discharges of sandblasting material and
23 other debris from the Lake Union Facility into Lake Union
24 constitute a deposit of refuse into a navigable water in
25 violation of the Refuse Act, 33 U.S.C. § 407.

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21. The Lake Union facility occupies parts of the banks and shorelines adjoining navigable waters of the United States within the meaning of the Refuse Act, 33 U.S.C. § 407.

22. In addition to depositing refuse in navigable waters, the defendants have deposited at the Lake Union Facility on the north bank of Lake Union certain refuse, namely sandblasting residues of the same type and composition as those described in paragraph 15. That refuse is currently located upon the north bank of Lake Union in such a location as to be liable to being washed into the lake. Such deposits of materials on the banks violate the Refuse Act, 33 U.S.C. § 407.

PRAYER FOR RELIEF

WHEREFORE, plaintiff United States of America requests an Order relating to both the Duwamish River Facility and the Lake Union Facility requiring that the defendants:

A. Cease submerging all dry docks and cease discharging pollutants from other point sources unless:

1. Such submergence and other discharges are authorized by a National Pollutant Discharge Elimination System permit issued by the Washington Department of Ecology ("WDOE") pursuant to 33 U.S.C. § 1342; or
2. The surfaces of the dry docks have been cleaned of all sandblasting debris, paint, solvents, grease, and other debris, using Best Management Practices as required by

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- 1 WDOE and EPA, and all other point source discharges
2 from the facilities cease;
- 3 B. Submit a plan for EPA and WDOE approval and, following such
4 approval, carry out a plan for:
- 5 1. A complete characterization, including, but not limited
6 to, chemical composition and biological effects, of:
- 7 a. virgin sandblasting material; and
8 b. spent sandblasting material and other solid and
9 liquid debris both before and after submergence
10 and ascent of a dry dock, should defendant choose
11 the option in subparagraph A.2., above;
- 12 2. A survey of the bottoms of the Duwamish River and Lake
13 Union to delineate the nature and extent of deposition
14 of sandblasting and other debris discharged from
15 defendants' facilities;
- 16 3. Demonstrating to the satisfaction of the Court, EPA,
17 and WDOE the efficacy of any cleaning regimen chosen
18 under subparagraph A.2, above.
- 19 C. Be assessed a penalty pursuant to Section 309 of the CWA, 33
20 U.S.C. § 1319, of not more than \$10,000 per day for each day on
21 which the defendants may be proven to have discharged pollutants
22 into the Duwamish River or Lake Union.
- 23 D. Be required to remove from the bottoms of the Duwamish River
24 and Lake Union all of the pollutants discharged by the defendants
25 which remain on the river and lake bottoms.
- 26

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1 E. Be assessed costs and such other relief as the Court deems
2 appropriate.

3 DATED this 8th day of March, 1985.

4 Respectfully submitted,

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